

AEROSPACE LAW AND POLICY SERIES

Aircraft Operating Leasing

**A Legal and Practical Analysis in the Context
of Public and Private International Air Law**

SECOND EDITION

DONAL PATRICK HANLEY



Wolters Kluwer

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and Private International Air Law

Second Edition

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Published by:

Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wolterskluwerlr.com

Sold and distributed in North, Central and South America by:

Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Sold and distributed in all other countries by:

Quadrant
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterskluwer.com

Printed on acid-free paper.

ISBN 978-90-411-6050-8

e-Book: ISBN 978-90-411-6053-9

web-PDF: ISBN 978-90-411-8813-7

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Printed in the United Kingdom.

Aircraft Operating Leasing

Aerospace Law and Policy Series

VOLUME 9

Editors

Pablo Mendes de Leon, Professor of Air and Space Law, and Tanja Masson-Zwaan, Assistant Professor of Space Law, Leiden University, The Netherlands.

Introduction

The *Aerospace Law and Policy Series* critically examines the fundamental changes that international aviation and space activities have undergone since the last century, growing up as mature industries while freeing themselves from traditional regulatory constraints and displaying a variety of innovative applications that call for creative legal solutions.

Objective

The objective of the Series is to make a contribution to legal thinking on public international air and space law and policy, and their implementation at the regional and national levels, responsibility and liability of public bodies and service providers, competition law, insurance law, company law, and the complex relationship between EU law and public international law.

Readership

Aviation and space lawyers, academics, representatives of governments, international organizations, and companies involved in aviation and space activities.

The titles published in this series are listed at the end of this volume.

About the Author

Donal Patrick Hanley was born in 1964 in Dublin, Ireland. Having lived in London, England, Tokyo, Japan, and Los Angeles, California, he now lives again in Dublin with his wife Helen.

He was educated by the Jesuits at Belvedere College, SJ, Dublin and at the Law School of Trinity College, Dublin University, from which he graduated with an MA degree. He received a European Commission scholarship to study Japanese language and business at Tokyo School of Japanese Language and Sophia University, SJ, as part of its Executive Training Programme in Japan. He also has an MA degree in Linguistics from Monash University, which he studied by distance learning, as well as an MBA degree in International Aviation from Concordia University, Montréal and a Diploma in Air Law from the International Air Transport Association (IATA) in Montréal, where he is an instructor in the IATA Training and Development Institute. He graduated *cum laude* with an LLM (Adv) in Air and Space Law from Leiden University in the Netherlands and obtained his doctorate there in 2011.

Dr Hanley is Managing Director of ACG Aircraft Leasing Ireland Limited, a Dublin based wholly owned subsidiary of Aviation Capital Group Corp. (ACG), a large California-based aircraft leasing company. With Dr Donald H. Bunker and others, he founded CIAF Leasing, an Egypt aircraft leasing company.

He represents ACG on the Aviation Working Group (AWG), an industry association of major aircraft and aircraft engine manufacturers, lessors, and financiers, and is a member of the AWG team negotiating legal documentation standardization with IATA.

Before joining ACG in 2005, he was an aircraft leasing and finance lawyer with extensive experience, both in private practice and in house, in Ireland and England for McCann FitzGerald, in Japan for Linklaters and in the United States and The Netherlands for Tombo Aviation Inc. and other group companies of Mitsui & Co., Ltd.

He is a solicitor admitted in Ireland and England and Wales and is a member of the State Bar of California. He served as Chair of the International Law Section of the State Bar of California from 2006 to 2007.

He is a Knight of the Holy Sepulchre, a Knight of Malta and a life member of the Stephen's Green Hibernian Club.

Preface to the Second Edition

The Feast of Our Lady of Victory, 2016

Four years have passed since the first edition of this work. This second edition takes account of developments in law and practice since the first edition and builds on the feedback received on the first edition. I am grateful for all feedback received, including suggestions for improvement.

One important development since the first edition has been the development of the Cape Town Convention Academic Project¹ and, in particular, its repository of legal materials, making available not only reports of judicial activity involving the Cape Town Convention but also reports of administrative and non-judicial activity. All those involved, as well as the members of the Aviation Working Group² and its Legal Advisory Panel are to be commended for this important work.

It is perhaps best not to let it go without saying that, not only are any errors in this book entirely my own responsibility, but that all opinions stated herein are purely my own personal ones and do not represent those of my employer or any other party.

The law is stated as of 30 September 2016.

Donal Patrick Hanley

Montréal, Québec, Canada

1. <http://www.ctcap.org>.

2. <http://www.awg.aero>.

Preface to the First Edition

The Feast of St Joseph the Worker, 2012

Men have always sought to reach the heavens. We see, for example, in The Holy Bible how men sought to build a city and a tower ‘the top whereof may reach to heaven’¹ and we see how the Lord decided, as a result, to confound their tongue and they ceased to build the city,² thence called ‘Babel... That is, confusion’.³ Notwithstanding the failure of the Tower of Babel project, ever since, men have continued with their efforts to reach the heavens until, finally, in our day, air travel and even space travel have become commonplace. The concept of leasing also goes far back through history – at least to Babylonian times⁴ – and has also developed since then until it is commonplace nowadays for aircraft.

Bringing together both air travel and leasing is a somewhat more recent endeavour and the laws and practices surrounding both need to take account of one another. Perhaps, in this regard, a certain aspect of the confusion of Babel is seen to this day, given the many legal systems and legal provisions that can be very hard, if not sometimes seemingly impossible, to reconcile, written, as they are, in many languages and not always taking into account one another.

It is the intent of this author that this work may serve to reduce that confusion and increase the common understanding of the legal and practical aspects of the aircraft operating lease and to clarify, at least to some extent, its place in the firmament of public and private international air law.⁵

This author’s motivation in tackling this subject lies in his surprise at how comparatively little has been written on it academically given its ever increasing importance and in his opinion, after more than twenty years of legal practice in the

-
1. Genesis 11:4, Old Testament, Holy Bible, Douay-Rheims, 1610, revised by Bishop Richard Challoner, 1752.
 2. Interestingly, we are not told that the tower itself was destroyed.
 3. *Ibid.*, 11:9.
 4. See Chapter 1 section §1.01 *infra*.
 5. The reader’s attention is drawn in particular to Chapter 1 section §1.03 *infra*, which sets out a detailed road map as to what lies ahead.

field, that there is an as yet undefined gap between law and practice in aircraft operating leasing.

Parties to a lease should be aware of the law so as not to include unenforceable provisions in their leases. Drafters of laws should at least be aware of practice when drafting laws that will affect such practice. Assuming that, having bridged any identified gaps between law and practice, leases contain only enforceable provisions, courts should swiftly and unambiguously enforce such provisions as drafted.

The law is stated as of 30 April 2012.

*Donal Patrick Hanley
Montréal, Québec, Canada*

List of Abbreviations

| | |
|--------|---|
| ABCA | Alberta Court of Appeal |
| AC | Appeal Cases |
| All ER | All England Reports |
| AWG | Aviation Working Group |
| CAEW | England and Wales Court of Appeal |
| CDCal | Central District of California |
| Ch | Chancery |
| Civ | Civil |
| Comm | Commercial |
| CRCO | Central Route Charges Office |
| CSOH | Court of Session Outer House |
| ECHR | European Convention on Human Rights |
| EHRR | European Human Rights Reports |
| EWCA | England and Wales Court of Appeal |
| EWHC | England and Wales High Court |
| FAA | Federal Aviation Administration of the United States of America |
| FASB | Financial Accounting Standards Board |
| HLR | House of Lords Reports |
| IASB | International Accounting Standards Board |
| IATA | International Air Transport Association |
| ICAO | International Civil Aviation Organization |
| ICLQ | International and Comparative Law Quarterly |
| IEHC | Ireland High Court |
| KB | King's Bench |
| NDCal | Northern District of California |

List of Abbreviations

| | |
|---------|--|
| OECD | Organisation for Economic Co-operation and Development |
| SCC | Supreme Court of Canada |
| ScotsCS | Scottish Sheriff Court |
| SDNY | Southern District of New York |
| UCTA | United Kingdom Unfair Contract Terms Act 1977 |
| UKHL | United Kingdom House of Lords |
| UKPC | United Kingdom Privy Council |
| WLR | Weekly Law Reports |

Acknowledgements

First, I wish to thank my parents, Donal and Norma, for having suggested a career in the law to me, as well as my classmates, teachers, professors, colleagues and superiors, past and present, for having inspired me to want to learn more and for invaluable advice throughout my career.

In particular, I thank my doctoral dissertation supervisors, Professor Pablo Mendes de Leon of Leiden University and Professor Donald Bunker of McGill University, the members of my doctoral and opposition committees and Ms Paula van der Wulp of the International Institute of Air and Space Law at Leiden University.

Next, I thank my sister, Ciara, and my brother, Cormac, for acting as my *paranymfs* during the defence of my doctoral dissertation on which this work is based. *Deo gratias*, the defence was successful.

I also thank Loren M Dollet, Esq, formerly Executive Vice President of Aviation Capital Group Corp, Newport Beach, California, for his kind consent to include the Supplement to this work.

Further, I wish to thank the libraries of Leiden University, of McGill University and of the International Civil Aviation Organisation for the use of their facilities during my research. I also thank the Organisation for Economic Co-operation and Development and the International Civil Aviation Organisation for their kind permission to reproduce Annexes 11 and 12, respectively.

Finally, but most of all, I wish to thank in a special way my wife, Helen, to whom this work is dedicated, for her loving support and patience with me during the long process involved in this study from start to finish.

In undertaking a study such as this, I am very much aware of how interdependent we all are. Nevertheless, writing is essentially an individual task: any errors that may be found herein are entirely my responsibility.

Go raibh maith agaibh go léir.

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